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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,487	02/17/2004	Kevin G. Kolpasky	GP-303547	1550

7590

11/22/2005

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EXAMINER
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COLLADO, CYNTHIA FRANCISCA

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,487	<b>Applicant(s)</b> KOLPASKY ET AL.	
	<b>Examiner</b> Cynthia F. Collado	<b>Art Unit</b> 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to-restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Response to Amendment***

Applicant submitted an amendment dated September 14, 2005, wherein claim 6 was amended and new claims 14 and 15 were added.

***Claim Rejections - 35 USC § 102***

1. Claim 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Hertzell"357 (US Patent No 3,718,357).

Hertzell teaches a step assembly for a vehicle comprising of a base member mountable with respect to the vehicle and having a base member stepping surface (see figure 1, element 60), one movable member being selectively repositionable with respect to the base member such that the length of the step assembly is selectively variable with at least one movable member having a movable member stepping surface (see figure 3, elements 64 and 65).

Referring to claim 2 Hertzell teaches a movable member is translatable with respect to the base member (see figure 3, elements 65).

Referring to claim 3 and 4, Hertzell teaches a track with one movable member is operatively engaged such that the track guides one movable member during translation, teaches a track on the base member (see figure 2, element 62 and 62b).

Referring to claim 5, Hertzell teaches one movable member is pivotable with respect to the base member (see figure 3, element 65).

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Claim 6-10, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Farkash'045 (US Patent No 6,406,045).

Referring to claim 6, Farkash'045 (US Pat No 6,406,045) teaches a vehicle body (see figure 1, element 10), a step assembly operatively connected to the vehicle body and including a base member defining a base member stepping surface (see fig 5, element 26) with one movable defining a movable member stepping surface (see fig 6, element 52) and being selectively repositionable with respect to the vehicle body such that the length of the step assembly is selectively variable (see figure 6).

Referring to claim 7, Farkash teaches one movable member is translatable with respect to the base (see figure 2, element 54).

Referring to claims 8, 9 and 10, Farkash teaches a track with one movable member is operatively engaged such that the track guides one movable member during translation, track is on the base (see figure 6, element 48).

Referring to claim 10, Farkash teaches one movable member is pivotable with respect to the base member (see figure 3, element 65).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farkash'045 (US Pat No 6,406,045) in view of Whitfield'923 (US Patent No 5,333,923). Farkash discloses a vehicle comprising a movable member, but does not teach a vehicle comprising of a front wheel with one movable member between a stowed position, however Whitfield teaches a vehicle comprising of a front wheel with one movable member between a stowed position in which one movable member does not extend rearward of any portion of the rear wheel, and extend position in which one movable member extends rearward of at least a portion of the rear wheel, (see figure 1A), Whitfield discloses a at least one movable member is movable between a stowed position in which said at least one movable member does not extend forward of any portion of the front wheel, and an extended position in which said at least one movable member extends forward of at least a portion of the front wheel (see figure 1), where he teaches a movable telescoping member can be moved to a retracted position adjacent one wheel well of the vehicle.

**Response to Arguments**

Applicant's arguments filed September 14, 2005 have been fully considered but they are not persuasive.

Applicant argued the rejection of claim 1 under 35 U.S.C 102(b) was improper because Hertzell does not disclose that the length of the bumper guard assembly 60 is selectively variable. However, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the length of the step assembly is selectively variable) in the longitudinal direction are not specifically recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner takes the length of the bumper guard assembly 60 to be selectively variable in the transverse direction, which is shown in figure 2.

In regard to claim 6, applicant asserts that element 26 of Farkash does not define a "stepping surface", and that element 52, the stepping surface of Farkash is not repositionable fore and aft with respect to the vehicle body. Examiner acknowledges the mistake made by referring to the stepping surface as figure 5, element 26, when in actuality, its figure 5, element 56. However, the claimed movable member stepping surface is selectively repositionable with respect to the vehicle body such that the length of the step assembly is selectively variable by viewing figure 6 as well as viewing column 6, lines 11-19.

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Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Allowable Subject Matter***

Claim 13 is allowed.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

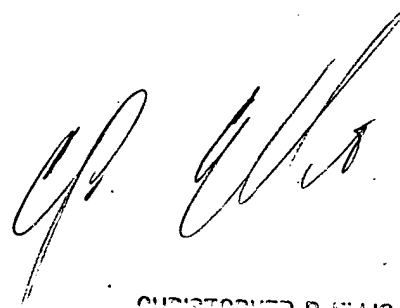
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia F. Collado whose telephone number is (571)2728315. The examiner can normally be reached on mon-fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571)2726914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 4/8/05  
CFC



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